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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,669	03/25/2004	Howard Scalzo	ETH1690CIP2	6201

27777 7590 05/31/2005

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EXAMINER
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EREZO, DARWIN P

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

10/808,669

Applicant(s)

SCALZO ET AL.

Examiner

Darwin P. Erez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.  
 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-4 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date 7/6/04.  
 4) ☐ Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) ☐ Notice of Informal Patent Application (PTO-152)  
 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,468,252 to Kaplan et al. in view of US 5,997,815 to Anders et al. in view of US 5,985,934 to Gaffney, and in further view of US 3,896,812 to Kurtz.

Kaplan teaches a suture assembly comprising a containment compartment **10** and a suture **34** positioned within the containment compartment, the suture comprising one or more surfaces having an antimicrobial agent disposed thereon (col. 17, lines 29-43); wherein a plastic cover sheet **20** and base **12** is positioned over the compartment to form an outer package.

Kaplan is silent with regards to the compartment having an antimicrobial agent and the suture having an antimicrobial agent selected from the group consisting of halogenated hydroxyl ethers, acyloxydiphenyl ethers; and further comprising an active agent, such as a biocide.

Anders teaches that it is well known in the art to provide antimicrobial coating to both surgical suture materials and packaging articles (col. 3, lines 1-11). However,

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Anders is silent with regards to the antimicrobial agent selected from the group consisting of halogenated hydroxyl ethers, acyloxydiphenyl ethers.

Gaffney teaches an antimicrobial composition comprising 2,4,4'-trichloro-2'-hydroxydiphenyl ether, or triclosan.

Kurtz teaches a suture having biocidal properties.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide antimicrobial properties to the containment compartment of Kaplan, as taught by Anders, because it prevents microbial growth in the suture package during storage. Furthermore, it would have been obvious to one of ordinary skill in the art to use any well known antimicrobial agent, including the agent taught by Gaffney, because using a particular antimicrobial agent would be a mere design choice since any antimicrobial agent would provide the same function of preventing microbial growth. Moreover, it would have been obvious to use the suture of Kurtz in the device of Kaplan because it prevents bacterial growth on the surgical site.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erez who's telephone number is (571) 272-4695. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan T. Nguyen can be reached on (571) 272-4963. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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GLENN K. DAWSON  
PRIMARY EXAMINER